

Decision **DRAFT DECISION OF ALJ GRAU** (Mailed 5/4/2006)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's Own Motion to Determine the Extent to Which the Public Utility Telephone Service Known as Voice over Internet Protocol Should Be Exempted from Regulatory Requirements.

Investigation 04-02-007  
(Filed February 11, 2004)

**OPINION CLOSING PROCEEDING****I. Summary**

Today's decision closes this proceeding, because we find we need not establish a regulatory framework for Voice over Internet Protocol telephony (VoIP) to resolve any of the issues raised in this investigation at this time. Because we need not move forward with this investigation, it is appropriate to close this proceeding. We grant the California Community Technology Policy Group's (CCTPG) petition to intervene and deny Disability Rights Advocates' motion for permission to file late comments.

**II. Background**

The Commission opened this investigation to consider the appropriate regulatory framework that should govern the provision of VoIP. In the Order Instituting Investigation (OII), the Commission tentatively concluded that providers offering VoIP service interconnected with the Public Switched Telephone Network are public utilities offering a telephone service subject to the

Commission's regulatory authority. The OII solicited comments on universal service, E911, access charges, compliance with North American Numbering Plan protocols, consumer protection rules, the impact of regulating or exempting from regulation, and intercompany compensation arrangements. Parties filed opening comments on April 5, 2004 and reply comments on May 14, 2004.<sup>1</sup>

In a May 11, 2004 ruling, the Assigned Commissioners denied Verizon California Inc.'s request that the reply comments in this proceeding be deferred until after reply comments were filed in the Federal Communications Commission's (FCC) proceeding addressing Internet Protocol enabled services. (Notice of Proposed Rulemaking, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, FCC 04-28, released March 10, 2004.)

Subsequent to the May 11, 2004 ruling, the FCC issued an order, which declared that Vonage Holding Corporation's (Vonage) VoIP service could not be separated into interstate and intrastate communications. Although the FCC noted states would continue to play a vital role in certain areas such as consumer protection, the FCC stated that it, not the states, would determine what regulations apply to IP-enabled services such as Vonage's. (*In the Matter of Vonage Holdings Corporation's Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, 19 FCC Rcd 22404, ¶ 1.) That FCC decision is currently on appeal. (Minnesota Pub. Utils. Comm'n et al. v. FCC, No. 05-1069 (8<sup>th</sup> Cir.).)

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<sup>1</sup> Thirty sets of opening comments and seventeen sets of reply comments were filed.

### **III. Discussion**

Our investigation centered on determining the appropriate regulatory framework for VoIP. Since the FCC has determined that it is charged with that role and is exercising its authority, we conclude that it is premature for us to assess what our regulatory role over VoIP will be and to address the issues raised in this investigation. We anticipate the role for state commissions will be defined in the future. Closing this proceeding, which has been inactive for almost two years, is preferable to further delay. Before we close this proceeding, we must address two motions before us.

CCTPG filed a petition to intervene with attached reply comments on June 10, 2004 at the request of the Administrative Law Judge (ALJ). CCTPG notes it timely filed reply comments on May 14, 2004, because it believed low income/minority groups were underrepresented in the proceeding. CCTPG has limited experience with the Commission's Rules of Practice and Procedure and believed it could file comments without becoming a party. No party opposed CCTPG's petition to intervene. The Commission encourages broad participation in its proceedings and would have benefited from the input of CCTPG as a representative of non-profit organizations had this proceeding continued. Thus, we grant CCTPG's petition even though we are closing this proceeding.

Disability Rights Advocates filed a motion for permission to file late comments and a notice of intent to claim compensation on November 8, 2004. Disability Rights Advocates, a non-profit legal center dedicated to the advancement of civil rights for people with disabilities, recently had become aware of the proceeding and sought leave to file late comments to address communications needs and services for people with disabilities. Since we are closing this proceeding and Disability Rights Advocates had not prepared

comments, we deny Disability Rights Advocates' motion for permission to file late comments. If the proceeding had remained open, we would have welcomed Disability Rights Advocates' input. Because we deny the motion for leave to file comments, Disability Rights Advocates' notice of intent to claim compensation is moot.

#### **IV. Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Opening comments were filed on May 24, 2006, and reply comments were filed on May 30, 2006. The ALJ permitted the Peninsula Ratepayers Association (PRA) to file late comments on June 8, 2006, because PRA moved and did not receive the draft decision.

No party objected to closing this proceeding. However, the Division of Ratepayer Advocates (DRA), PRA, and The Utility Reform Network request that we take certain actions in advance of closing this proceeding. DRA states we should include information about VoIP services in the Consumer Protection Initiative adopted in Decision (D.) 06-03-013. TURN urges us to apply consumer protection standards and service quality rules that apply to other local exchange services to VoIP. PRA agrees with DRA and TURN that disseminating consumer information about VoIP is the most effective consumer protection. PRA urges that we continue to advocate competition to the FCC and to defend our authority to prevent FCC surcharges on flat-rate telephone service and should reserve our jurisdiction to intervene as necessary. Pacific Bell Telephone Company d/b/a AT&T California (AT&T) opposes the application of consumer protection rules, consumer education initiatives, and service quality rules to VoIP. AT&T states that DRA's and TURN's requests are collateral attacks on D.06-03-013, because

that decision noted that the federal government has found that all enhanced or information services are broadly exempt from state communications regulations.

We do not find persuasive TURN's, ORA's, and PRA's requests that we immediately establish our consumer protection role over VoIP. Our regulatory role is still uncertain, and we have not found an immediate need to address VoIP consumer protection issues. We are tracking VoIP complaints and have seen neither a high number of complaints nor a significant increase in complaints. Should that change, we can reassess this determination. In sum, we find no reason to take further action before closing this proceeding.

## **V. Assignment of Proceeding**

President Michael R. Peevey and Geoffrey F. Brown are the Assigned Commissioners, and Janice Grau is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. The FCC has determined that it, not the states, will prescribe what regulations apply to IP-enabled services such as Vonage's.
2. CCTPG filed a petition to intervene with attached reply comments on June 10, 2004. Disability Rights Advocates filed a motion for permission to file late comments on November 8, 2004.

## **Conclusions of Law**

1. This proceeding should be closed.
2. It is reasonable to grant CCTPG's petition to intervene and to deny Disability Rights Advocates' motion for permission to file late comments.

**O R D E R**

**IT IS ORDERED** that Investigation 04-02-007 is closed as set forth herein.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.